

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

John and Janet Holder

F-2019-3008809

v.

PPL Electric Utilities Corporation

June Maculesky

F-2019-3008832

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by John and Janet Holder¹ (the Complainants) on November 3, 2020, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, which was served on the Parties on October 14, 2020, in the above-captioned proceeding. Replies to Exceptions were filed by PPL Electric Utilities Corporation (PPL or the Company) on November 24, 2023.² In her Initial Decision, ALJ Barnes recommended that the Commission deny and dismiss the Amended Formal Complaint (Complaint) filed by the Complainants as amended on September 4, 2019. For the reasons discussed below, we shall deny the Complainants' Exceptions, adopt the Initial Decision of ALJ Barnes, and dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PPL proposes to install at the Complainants' residence and use in the ordinary course of business to measure the Complainants' electricity consumption. The Complainants refuse to have a smart meter installed for health, safety and privacy reasons. In their Amended Complaint, the Complainants requested, *inter alia*: (1) that the Commission allow the Complainants to opt out of the installation of a smart meter at the service address; and (2) that the

¹ The formal complaint of John and Janet Holder was consolidated with a complaint Ms. Holder filed, as power of attorney, on behalf of her mother, Ms. June Maculesky.

² PPL's Replies to Exceptions are considered timely. The Commission issued a stay discussed, *infra*, at 8, affecting this proceeding on November 4, 2020. The stay was lifted on November 14, 2023.

Commission prevent PPL from terminating the Complainants' service as a result of their refusal of the installation of a smart meter. Amended Complaint at 386-87.

PPL is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns and maintains the meters in its distribution system. *See*, PPL's Tariff Electric Pa. P.U.C. No. 201, Rule 8 at 12.

The Complainants, John and Janet Holder and June Maculesky, are PPL customers who have been notified of PPL's intent to install a smart meter at the service addresses. Answer to Amended Complaint at 3-4.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See*, H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including PPL, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*). PPL sought and obtained the Commission’s approval to complete the installation of AMI meters for substantially all customers within its service territory by the end of 2019. *See, Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan*, Docket No. M-2014-2430781 (Opinion and Order entered September 3, 2015) (*PPL 2015 Smart Meter Order*); *see also, Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2123945 (Opinion and Order entered June 24, 2010) (*PPL 2010 Smart Meter Order*).

II. History of the Proceeding

On March 18, 2019, John and Janet Holder filed a formal complaint against PPL with the Commission at Docket No. F-2019-3008809 seeking to prevent the

installation of a smart meter at their residence due to alleged health, safety, and privacy concerns. Also on March 18, 2019, Janet Holder, as power of attorney, filed on behalf of her mother, June Maculesky, a formal complaint against PPL at Docket No. F-2019-3008832, in which she also sought the prevention of a smart meter being installed at her residence, averring the same allegations.³ The Holders and Ms. Maculesky sought to opt out of smart meter installation. I.D. at 1-2.

On March 27, 2019, PPL was served with the above-captioned formal complaints. On April 23, 2019, PPL filed a Motion to Consolidate both formal complaints. There was no objection to the consolidation. By Order dated May 14, 2019, the proceedings were consolidated pursuant to 52 Pa. Code § 5.81.

On September 4, 2019, the Holders and Ms. Maculesky (Complainants) together filed the Complaint raising the same issues in the prior formal complaints and attaching to it 389 pages of what they identified as “exhibits” to support their amended complaint. I.D. at 2.

PPL requested and was granted an extension to file an answer to the amended complaint. Tr. at 4. PPL filed an answer to the amended complaint on January 21, 2020 (Answer). The Answer admitted that PPL provides electric service to the Complainants at the addresses shown on the respective consolidated Complaints. The Answer provided that PPL is required to install AMI, or smart meters, for all automatic meter reading customers and that it has the right to terminate service for failure of the customer to permit access to the meter. Answer at 4-7.

³ Both formal complaints are timely appeals from decisions of the Commission’s Bureau of Consumer Services (BCS) which denied both informal complaints by decisions dated January 1, 2019. The Holders appeal from the decision at BCS No. 3667431 and Ms. Maculesky’s appeals from the decision at BCS No. 3667472. I.D. at 2, n. 1.

On February 28, 2020, PPL filed a Motion in Limine and Motion for Sanctions requesting that the Complainants be precluded from submitting hearsay evidence regarding health issues as they indicated they would not be calling any expert witnesses and refused to answer interrogatories regarding their health issues. PPL requested a ruling that the ALJ find that the Complainants would not suffer any deleterious health effects from the AMI meter to be installed at their respective residences. I.D. at 3.

On or about April 21, 2020, the Complainants filed their response to the Motion in Limine. The Complainants argued that just because they do not have any present health conditions, they should not be precluded from submitting evidence and arguing that AMI wireless smart meter devices potentially could or would cause, contribute to, or exacerbate future biological or adverse health effects. *Id.*

On May 26, 2020, an Order (*May 2020 Order*) granting PPL's Motion in Limine and Motion for Sanctions was issued. Because the Complainants failed to produce any information and documents responsive to PPL to Complainant Set I, No. 4 during the course of this proceeding, and they indicated that they did not intend to do so, the ALJ found that the Complainants have not and will not experience any medical conditions or issues from the installation of PPL Electric's AMI meter as a sanction. Therefore, the Complainants' health allegations were not addressed in the Initial Decision. *Id.*

On June 12, 2020, the Complainants filed an Exception to the *May 2020 Order* which granted PPL's Motion for Sanctions. On June 22, 2020, PPL filed a Reply to the Exceptions of John and Janet Holder and June Maculesky to the *May 2020 Order*. On June 23, 2020, an Order denying the Exceptions of John and Janet Holder and June Maculesky to the *May 2020 Order* was issued.

On July 31, 2020, the Complainants filed a Main Brief. On August 5, 2020, PPL filed a Motion to Strike the Complainants' Main Brief and Motion for Sanctions. PPL argued that the Complainants' Main Brief was premature. PPL requested that the ALJ issue sanctions due to the Complainants' attempt to rely on evidence that was excluded from the record by the *May 2020 Order*. Motion to Strike Main Brief at 2-3.

The hearing was held on August 6, 2020. At the hearing, the Complainants Janet and John Holder appeared *pro se* and submitted no exhibits or expert witness testimony. PPL appeared with fifteen exhibits and four witnesses. Only the statements and exhibits of PPL witnesses Mike Asbury and Kevin Durkin were offered and admitted into the record at the hearing. A 58-page transcript of the hearing was filed on August 20, 2020, and the record closed on the same date. I.D. at 4.

The ALJ addressed the Complainants' July 31, 2020 Main Brief filing and PPL's Motion to Strike the Main Brief at the August 6, 2020 hearing. The ALJ approved PPL's Motion to Strike the Main Brief but did not dismiss the case as sanction as PPL had requested. Tr. at 5-8.

On August 25, 2020, the Complainants filed a Motion to Remove Sanctions and a Motion to File an Amended Brief. On August 28, 2020, the Complainants filed a Revised Motion to File an Amended Brief. On September 14, 2020, PPL filed an Answer to the Complainants' Motion to Remove Sanctions. The Complainants filed a Reply to the PPL Answer on September 21, 2020. The Complainants filed a Reply to Answer in Opposition to the Motion to Remove Sanctions on September 23, 2020.

On September 25, 2020, PPL filed a Letter response to the Complainants' September 23, 2020 Reply. PPL argued that the Complainants' September 23, 2020

submittal did not constitute a permissible pleading before the Commission. PPL September 25, 2020 Letter at 1-2.

On October 14, 2020, the Commission served ALJ Barnes' Initial Decision in *John and Janet Holder v. PPL Electric Utilities Corporation*, Docket No. F-2019-3008809 and *June Maculesky v. PPL Electric Utilities Corporation*, Docket No. F-2019-3008832.

As noted above, on November 3, 2020, the Complainants filed Exceptions to the Initial Decision.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay. Notice was provided on November 14, 2023, informing the Complainants of the lifting of the stay and their procedural rights and obligations under the Commission's regulations.

On November 24, 2023, PPL filed Replies to Exceptions.

Also on November 24, 2023, the Complainants filed a document titled "Reply Exceptions." The Complainants filed subsequent documents related to these "Reply Exceptions" including corrections to the Reply documents and Exhibits related to

the Reply documents on November 27, 2023; December 20, 2023; December 27, 2023; and December 28, 2023. These documents do not constitute permissible pleadings before the Commission and will be considered as improper filings. Section 5.535 of the Commission’s regulations, 52 Pa. Code § 5.535, does not permit a party to file a reply to their own exception or submit exhibits as “a reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception.” 52 Pa. Code § 5.535(a).

III. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.”

Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See, Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See, Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See, Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See, Milkie*, 768 A.2d at 1220; *see also, Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be

entitled to a favorable ruling. *See, Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See, Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also, Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁴ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501⁵ Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the

⁴ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

⁵ The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See*, 52 Pa. Code § 57.28(a)(1). *See, Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632* (Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

Commonwealth Court’s October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission’s March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, C-2015-2475023 (*Povacz 2019 Order*); *Laura Sunstein Murphy v. PECO Energy Company*, C-2015-2475726 (*Laura Sunstein Murphy*); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, C-2016-2537666 (*Cynthia Randall*). By *Povacz II*, the Supreme Court affirmatively established that there is no “opt-out” provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II*, 280 A. 3d at 983-984.

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain “adequate, efficient, safe, and reasonable service⁶ and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code, provides, in pertinent part, as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall

⁶ The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

As previously noted, in *Povacz II*, the Pennsylvania Supreme Court not only affirmed the Commission’s determination that there is no “opt-out” provision for smart meter installation in either Act 129, the Code, Commission Regulations, or Orders, but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501⁷ of the Code. Therein, the Supreme Court stated:

[W]e conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

Povacz II, at 983-984; *See, Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013) (*Povacz 2013 Order*); *see also, Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018) (*Frompovich*).

⁷ The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000, citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. January 28, 2016) (*Kreider*).

In applying Section 1501 to a complaint challenging the installation of smart meter technology, the Supreme Court affirmed the Commission’s Opinion and Order in the *Povacz 2019 Order*, stating:

A customer seeking affirmative relief from the [Commission] must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a [Commission] regulation or [o]rder, or a violation of a [Commission]-approved tariff. [See] 66 Pa.C.S. §§ 332(a), 701; *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, . . . 134 Pa. Commw. 218, 578 A.2d 600 ([Pa. Cmwlth.] 1990)[.] . . .

Although Act 129 does not provide an electric customer [] with the right to opt-out of the installation of a smart meter at their residence, they [sic] may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.

. . . .

Pursuant to [S]ection [1501 of the Code], an EDC (as a public utility) must provide service that is, *inter alia*, both safe and reasonable. **To carry their burden of proof on a Section 1501 [of the Code] claim, a smart meter challenger may be required to present medical documentation and/or expert testimony demonstrating that the furnishing of a smart meter constitutes unsafe or unreasonable service** in violation of Section 1501 [of the Code] under the circumstances presented. *Susan Kreider v. PECO Energy Co.*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. Jan. 28, 2016).

Povacz II, 280 A. 3d at 999-1000 (emphasis added; footnote omitted).⁸

⁸ With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant’s own personal testimony and/or “the testimony of others as well as other evidence that goes to that issue.” *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *Povacz 2019 Order*, and was subsequently affirmed by the Supreme Court in *Povacz II*, that in order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused or will cause adverse health effects or harm to human health, the Complainant must demonstrate by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)⁹ from the AMI meter.¹⁰

3. Other Relevant Legal Standards

In addition to establishing that a complaint challenging the installation of a smart meter may arise under Section 1501, the Supreme Court’s decision in *Povacz II* acknowledged the Commonwealth Court’s rejection of a constitutional claim for exemption from smart meter installation predicated on a violation of “bodily integrity.” The Supreme Court noted the Commonwealth Court’s denial of a claim under the Fourteenth Amendment, stating:

The Commonwealth Court rejected Customers’ constitutional arguments, persuaded by the reasoning of *Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. Ill. 2014) (“*Naperville I*”). Therein, a federal district court rejected the customers’ “*Fourteenth Amendment* bodily integrity argument because their complaint failed to identify an arbitrary deprivation of a recognized liberty or property interest” and to aver that the city’s decision to employ smart

⁹ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

¹⁰ See, *Povacz 2019 Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

meters was arbitrary. *Id.* at 839 (internal quotations marks omitted).

Povacz II at 985, fn. 8. As the Supreme Court denied allocator as to any constitutional claims, the Commonwealth Court's holding stands.

Further, the Supreme Court noted that a customer must be connected to the distribution system to receive electric service confirming that EDCs operate in a universal basis. *Povacz II* at 993. As such, the Court concluded that by obtaining service from their incumbent EDC, customers contractually accept the EDC's Commission-approved Tariff, including the installation of smart meter technology. *Id.* at 994. Therefore, the Supreme Court found that "the authority to select and install a certain type of electric meter rests solely with the EDCs, [...] not the customer." *Id.*

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Barnes made thirteen Findings of Fact (FOF) and reached eighteen Conclusions of Law (COL). I.D. at 4-5, 14-17. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her disposition, ALJ Barnes addressed, *inter alia*, the following issues: (1) the Complainants' request for an opt out of smart meter installation; and (2) the Complainants' concerns regarding data privacy. I.D. at 9-14.

1. Act 129 and Opt-Out Programs

The ALJ noted the Complainant's contention that over thirty other states allow customers to opt-out of smart meter installation. The ALJ noted that while other states have opt-out provisions it is non-binding. The ALJ provided that the Commission has consistently held there is no opt-out provision for similarly situated Complainants. I.D. at 10-11. The ALJ concluded that EDCs such as PPL would be in violation of law if they did not install a smart meter at properties similarly situated to the Complainants' residence. I.D. at 12 (citing *Povacz 2013 Order, Frompovich* at 7-8).

2. Data Privacy

The ALJ noted that the Complainants argued that installation of a smart meter at the service address would invade their privacy and violate their Fourth Amendment Rights against unreasonable search and seizure. I.D. at 12 (citing Tr. at 13, 15).

The ALJ provided that PPL filed a detailed AMI Customer Privacy Policy which sets forth the data PPL will collect using the smart meter, the steps PPL will take to protect the data and how PPL will use the data. I.D. at 13 (citing PPL Exh. MA-1). The ALJ explained that PPL uses firewalls to prevent unauthorized access to the AMI network, customer data is encrypted, and PPL's cybersecurity and data privacy policies are consistent with national policies. I.D. at 13 (citing PPL St. 4). The ALJ explained

further that the Complainants can decline to have the ZigBee radio¹¹ activated if they are concerned about the AMI meter's connection with smart appliances at the service address. I.D. at 13 (citing *Lesniewski v. PPL Electric Utilities Corp.*, C-2018-3004594 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019), wherein the Commission found in favor of PPL regarding the same data privacy issue.

The ALJ agreed with PPL, that it is not a state actor and opined that there is no evidence in the instant case that PPL is making its data easily accessible to law enforcement or other third parties. The ALJ cited *Naperville II*, noting that the Court found that smart meters used by the City of Naperville were constitutionally permissible and consistent with the Fourth Amendment. I.D. at 13-14.

Based on all the above, the ALJ recommended that the Commission dismiss the Complaint for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa.C.S. § 1501 or otherwise violates the Code, a Commission order or regulation or a Commission-approved tariff of the company. I.D. at 14.

C. Exceptions, Replies, and Disposition

The Complainants Exceptions¹² generally pertain to the following:
(1) Act 129 and an opt-out request; (2) the Motion in Limine and Motion for Sanctions

¹¹ The smart meter proposed for use at the service address has a radio component to communicate with PPL and a Zigbee radio component to communicate with the customer's smart appliances if activated by the customer. PPL St. 4 at 12.

¹² We acknowledge that the format of the Complainants' Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainants are appearing *pro se*, we will accept

and due process; (3) burden of proof; (4) termination of service; and (5) Constitutional claims. For ease of disposition, the eight (8) Exceptions are separated into these five (5) broader subsections.

To the extent the Complainants' Exceptions include commentary alleging bias without foundation, such commentary is deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(e), we shall strike such statements from our consideration of the Complainants' Exceptions.

As mentioned, *infra*, on November 24, 2023, the Complainants filed a document titled "Reply Exceptions." The Complainants filed subsequent documents related to these "Reply Exceptions" including corrections to the Reply documents and Exhibits related to the Reply documents on November 27, 2023; December 20, 2023; December 27, 2023; and December 28, 2023. These documents do not constitute permissible pleadings before the Commission and will be considered as improper filings. Section 5.535 of the Commission's regulations, 52 Pa. Code § 5.535, does not permit a party to file a reply to their own exception or submit exhibits as "a reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception." 52 Pa. Code § 5.535(a).

To the extent the Parties used extra-record materials in their Exceptions or Reply Exceptions, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*).

the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and economical determination. The Complainants' Exceptions, in some cases, repeat arguments or overlap. Where appropriate, we have grouped the Exceptions by topic in our Dispositions.

Accordingly, any extra-record information the Parties used in their Exceptions or Reply Exceptions will not be considered. *Apollo Gas*.

1. Complainants' Arguments Regarding Act 129 and an Opt-out

a. Exception Nos. 1, 2, 3 and 8

In their Exception Nos. 1, 2, 3 and 8, the Complainants disagree with the Commission's interpretation and application of Act 129. The Complainants contend that Act 129 does not require the installation of a smart meter at the Complainants' service address. The Complainants cite to *Povacz I* as justification that a smart meter is not required to be installed at the service address. Exc. at 7-26, 34-39.

b. Replies

PPL argues that the Complainants erroneously rely on the Commonwealth Court's ruling in *Povacz I*, however, PPL notes the Pennsylvania Supreme Court concluded that Act 129 mandates that EDCs like PPL must furnish smart meters to customers including the Complainants. R. Exc. at 2 (citing *Povacz II*). PPL explains that even if the customer establishes by a preponderance of the evidence that the smart meter installation will violate Section 1501, the customer is entitled to an accommodation only to the extent allowed by Act 129 and a utility's tariff. PPL avers that nothing in the Company's tariff permits an opt out of the smart meter installation. R. Exc. at 2-3 (citing *Povacz II* at 1014). The only accommodation set forth in PPL's tariff is the relocation of the meter for which the customer must pay the relocation costs. R. Exc. (citing PPL Tariff Rule 4(I)(2), Supp. No. 59 to Electric Pa. P.U.C. No. 201).

c. Disposition

In *Povacz II*, the Pennsylvania Supreme Court expressly concluded that the complainant's assertion of the right to "opt-out" of Act 129 was unfounded. The Supreme Court further found that a customer may seek an accommodation to smart meter installation, provided the customer first established a violation under Section 1501 of the Code. Therein, the Supreme Court stated:

[W]e conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

Povacz II, at 983-84. Therefore, by establishing that there is no "opt-out" permitting a customer to refuse smart meter installation, the Supreme Court's holding in *Povacz II* is controlling on the question. In the present case, the Complainants' Exceptions fail to establish any violation by the utility under Section 1501 of the Code, as a prerequisite to seeking an accommodation. Accordingly, to the extent the Complainants assert a right to opt out of Act 129 to refuse smart meter installation, we shall deny the Complainants' Exception Nos. 1, 2, 3, and 8.

2. Complainants' Arguments Regarding the Motion in Limine and Motion for Sanctions and Due Process

a. Exception Nos. 4, 5, and 6

In their Exception Nos. 4, 5, and 6, the Complainants contend that the ALJ erred by granting PPL's Motion in Limine and Motion for Sanctions in the *May 2020 Order*, and in doing so deprived the Complainants of their right to due process. Exc. at 26-32.

b. Replies

PPL notes that despite the Complainants arguing that the proposed smart meter would cause, contribute to, or exacerbate adverse health effects, the Complainants refused to provide their medical records in support of their health-related allegations. R. Exc. at 3-4 (citing Exc. at 26-28, 32). PPL continues that the Complainants argue that certain of their exhibits that were stricken are "public documents" and should have been admitted pursuant to Section 5.406(a)(1)-(2) of the Commission's Regulations. R. Exc. at 4 (citing Exc. at 28-31). PPL contends that by failing to provide their medical records, the Complainants deprived PPL of a reasonable opportunity to rebut the Complainants' health-related assertions. R. Exc. at 4.

PPL contends that the Complainants were provided notice of the Motion in Limine and Motion for Sanctions and had the opportunity to respond to the filing. PPL notes that on April 16, 2020, the Complainants filed an "Answer in Opposition: to the Motion for Sanctions" and a 398-page long "Motion in Opposition" to the Motion in Limine. PPL offers that the Complainants could preserve their health-related allegations by complying with PPL's discovery request seeking basic information and documents

that were relevant to their claim that installation of smart meters at their property would cause, contribute to or exacerbate adverse health effects. R. Exc. at 5.

PPL maintains that the Commission should reject the Complainants' argument that certain of the stricken exhibits should have been admitted as public documents. PPL provides that none of the Complainants' exhibits were submitted for admission into the record at the hearing. R. Exc. at 6 (citing I.D. at 4). According to PPL, the Complainants did not raise their "public documents" argument in response to the Motion in Limine and Motion for Sanctions and are prohibited from doing so now. R. Exc. at 6 (citing *Apollo Gas*). PPL continues that the Complainants did not establish that their exhibits that were stricken meet the definition of "public documents" under Section 5.406(a)(1)-(2). PPL explains that the Complainants appear to confuse any documents that are "publicly available" with the narrow category of "public documents" which must be "[a] report or other document on file with the Commission" or "[a]n official report, decision, opinion, published scientific or economic statistical data or similar public document which is issued by a governmental department, agency, committee, commission or similar entity which is shown by the offeror to be reasonably available to the public." *Id.*

c. Disposition

On February 28, 2020, PPL filed a Motion in Limine and Motion for Sanctions. The *May 2020 Order* granted PPL's Motion in Limine and Motion for Sanctions. The *May 2020 Order* addressed (1) the multitude of exhibits and hours of videos and additional pages of documents submitted with the Complaint and (2) the sanctions resulting from the Complainants' refusal to provide information and documents responsive to Complainant Set I, No. 4.

The Complainants contend that the Motion in Limine and Motion for Sanctions granted by the ALJ in the *May 2020 Order* violated their due process rights and prevented them from fully litigating their case. Exc. at 28.

Due Process

The Complainants argue that they were denied due process because the ALJ granted PPL's Motion for Limine and Sanctions. In *Lucey v. Metropolitan Edison Co.*, Docket No, C-2018-3003679 (Order entered October 8, 2020) (*Lucey*), the Commission provided:

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984), citing *Township of Middleton v. The Institute District of the County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), aff'd 450 Pa. 282, 299 A.2d 599 (Pa. Cmwlth. 1973). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

Lucey at 17.

The Complainants were given notice of the Motion in Limine and Motion for Sanctions. The Complainants were given the opportunity to be heard regarding the

Motion in Limine and Motion for Sanctions. The Complainants have participated in the case regarding this issue numerous times with the following filings:

- Answer in Opposition to Motion for Sanctions, 4/21/2020
- Motion in Opposition to Motion in Limine to Exclude Evidentiary Exhibits, 4/22/2020
- Exceptions to ALJ Order Granting Respondents' Motion in Limine, 6/12/2020
- Exceptions to ALJ Order Granting Respondent's Motion for Sanctions, 6/12/2020
- Motion to Remove Sanctions, 8/25/20
- Reply to PPL Answer to Motion, 9/21/2020
- Reply to Answer in Opposition to Motion to Remove Sanctions, 9/23/2020
- Amended Motion to Remove Sanctions, 9/25/2020
- Corrected Amended Motion to Remove Sanctions, 9/28/2020

On June 23, 2020, an Order denying the Exceptions of John and Janet Holder and June Maculesky to the *May 2020 Order* was issued.

The Complainants were also given the opportunity to be heard at the hearing. Mr. Holder participated in the hearing. Tr. at 5, 10. During the hearing, Mr. Holder explained why the Complainants filed the Complaint and what relief they were seeking. Tr. at 10-24. The Complainants were offered the opportunity to cross-examine PPL's witnesses. Tr. at 32-40, 43-46. Mr. Holder was given the opportunity to present a closing argument. Tr. at 50-55. The Complainants were free to seek expert testimony and submit exhibits at the hearing to be entered into the record. The Complainants chose not to do so. The Complainants' due process rights were exercised throughout the proceedings. Accordingly, we find that the Complainants' arguments that they were not afforded due process are without merit.

Complainants' Exhibits

Many of the Complainants' Exhibits submitted in their Complaint were determined by the ALJ to be hearsay.

The Motion in Limine and Motion for Sanctions submitted by PPL states the following:

[B]ecause the exhibits: are hearsay and not subject to a hearsay exception under the Pennsylvania Rules of Evidence; are irrelevant; have not and cannot be authenticated by the Complainants; constitute statements by individuals the Complainants'[sic] failed to disclose as witnesses in discovery; are inherently unreliable; and/or violate the best evidence rule. Moreover, the Complainants' exhibits also should be excluded because the Complainants have admitted in their discovery response that they are not calling any expert witness and, therefore, they should not be allowed to introduce and rely upon these numerous hearsay exhibits.

Motion in Limine at 1-2.

The *May 2020 Order* determined that some of the Complainants' exhibits submitted with the Amended Formal Complaint were inadmissible as hearsay and not subject to a hearsay exception. The ALJ also noted that a number of the exhibits were potentially admissible, but the Complainants did not request that these be admitted to the record at the hearing. We find no error in the *May 2020 Order* regarding the exclusion of documents that the ALJ determined were hearsay. The Complainants indicated before the hearing that they would not be calling any expert witnesses. Motion in Limine, Appendix B at 3-4. The Complainants were not planning to call an expert to testify at the hearing who could support their proposed exhibits that did not qualify for the hearsay exception.

Sanctions

The Complainants indicated prior to the hearing that they would not respond to PPL's discovery requests regarding the Complainants' health records. Motion in Limine at 2. PPL is entitled to engage in discovery in order to obtain information that is relevant and material to the issues raised by the Complainants. 52 Pa. Code §§ 5.341. Sections 5.371 and 5.372 of the Commission's Regulations address the consequences of a participant's failure to comply with the Commission's discovery regulations. The Commission or the presiding officer may make an appropriate order if a party fails to answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests. The Commission or presiding officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's Regulations. A complex litigated proceeding must be held to a high standard. *Anthony Venini v. PPL Electric Utilities Corporation*, Docket No. C-2018-3006469 (Opinion and Order entered January 29, 2020) at 12; *Paul Berginc v. West Penn Power*, Docket No. C-2017-2632636 (Opinion and Order entered March 26, 2020) at 10-12.

In the present case, the Complainants failed to produce information or documents responsive to PPL's discovery question at Complainant Set I, No. 4 regarding medical information for the Complainants. The Complainants indicated that they did not intend to respond to PPL's discovery request or call any expert witnesses to testify. In the *May 2020 Order*, the ALJ found that the Complainants have not and will not experience any medical conditions or issues from the installation of PPL Electric's AMI meter. In this case, we find that the ALJ's ruling that the Complainants have not and will not experience any medical conditions or issues from the installation of the smart meter to be an appropriate sanction. However, we clarify that the *May 2020 Order* stating that the Complainant's "will not experience any medical conditions from the installation of PPL Electric's AMI meter" pertains only to this proceeding. *May 2020 Order* at 2. In

this case, it was an appropriate sanction to preclude the Complainants from presenting evidence of medical harm, based on the Complainants failure to respond to discovery regarding the medical claim. Nonetheless, we note that the bar in this case would not preclude a future claim based upon evidence showing a conclusive causal connection between RF waves and actual medical harm to a complainant. See, *Povacz II* at 1006.

Based upon review of the transcript and the Initial Decision, we conclude that the Complainants had ample opportunity to present their evidence and legal arguments at the hearing. We find no error with the ALJ's preclusion of medical evidence in the *May 2020 Order, for purposes of this litigation*. The ALJ did not err in granting the Motion in Limine or the Motion for Sanctions in this proceeding. Therefore, the Complainants' Exceptions Nos. 4, 5, and 6 with regard to due process and the Motion in Limine and Motion for Sanctions are denied.

3. Complainants' Arguments Regarding the Burden of Proof

a. Exception Nos. 3 and 6

In their Exception No. 3, the Complainants argue that the ALJ erred in dismissing the Complaint by failing to acknowledge PPL's responsibility to its customers pursuant to Section 1501. Exc. at 25-26. In their Exception No. 6, the Complainants contend that the ALJ erred in concluding that the Complainants failed to "prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501." Exc. at 31 (citing I.D. at 14).

b. Replies

According to PPL, the ALJ correctly found that the Complainants have not and will not experience any medical conditions or issues from the installation of PPL's AMI meter as a sanction. R. Exc. at 7-8 (citing I.D. at 3).

c. Disposition

As noted, *supra*, in affirming the Commission's 2019 *Povacz Order*, the Pennsylvania Supreme Court held in *Povacz II* that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specially, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the AMI meter. *See, Povacz II* at 1006. In that context, the lay opinion of the Complainants does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.*

The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Id.* at 1005. The Court further opined that while a customer's evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a

customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Id.* Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.

To prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See, 2019 Povacz Order.* Here the ALJ properly concluded that the Complainants have failed to sustain their burden of proof that PPL violated 66 Pa.C.S. § 1501. *I.D.* at 14.

In the present case, the ALJ determined that several of the Complainants' proposed exhibits were hearsay not subject to the hearsay exception. *May 2020 Order* at 2. Regardless of this determination, the Complainants did not seek to have any exhibits entered into the record at the evidentiary hearing. The Complainants did not offer the testimony of any expert witnesses.

Mr. Holder testified at the hearing that “[t]o our knowledge, we do not have any health conditions. Our concerns are not about the exacerbation of or contribution to health conditions due to exposure to RF from smart meters. Our concerns legitimately have to do only with causation, that is the potential RF emitted by smart meters to cause adverse health effects in the future.” *Tr.* at 17. In *Povacz II*, the Supreme Court opined

that while a customer's evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Povacz II* at 1008. We agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainants failed to prove by a preponderance of the evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa.C.S. § 1501 or otherwise violates the Code, a Commission order or regulation or a Commission-approved tariff of the company. I.D. at 14.

We find nothing in the Complainant's Exceptions to refute the ALJ's conclusion that the installation of the new AMI meter would violate the Code or any Commission regulation or order. I.D. at 23, COL 13 (citing 66 Pa.C.S. §§ 332(a), 701).

Therefore, upon review of the record, and based on the foregoing discussion, we find that the ALJ properly concluded that the Complainant failed to establish by a preponderance of the evidence that the Company's installation of a smart meter would constitute unreasonable or unsafe provision of service under Section 1501 of the Code. Therefore, we shall deny the Complainants' Exception Nos. 3 and 6 challenging the ALJ's dismissal of the Complaint for failure to satisfy the burden of proof.

4. Complainant's Arguments Regarding the Potential Termination of Service

a. Exception Nos. 1, 2, and 8

The Complainants argue that PPL is not permitted to terminate their service due to their refusal of the installation of a smart meter. Exc. at 11-13, 15, 23-24, 35, 37, and 39.

b. Replies

PPL provides that it has the legal right under its Commission-approved tariff, the Commission’s regulations, and Chapter 14 of the Code to terminate the Complainants’ service if it is denied reasonable access to its meters. R. Exc. at 15 (citing 66 Pa.C.S. § 1406(1)(4); 52 Pa. Code § 56.81(3); PPL Exhs. KD-5 and KD-6).

c. Disposition

We disagree with the Complainants’ argument that the Company cannot lawfully terminate their electric service for failure to provide access to the meter. The Commission has stated that “[i]t is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided.” *Frompovich*. Accordingly, the Complainants’ Exception Nos. 1, 2, and 8 regarding termination of service where the customer prevents access for installation of the meter are denied.

5. Complainants’ Argument Regarding Constitutional Claims

a. Exception Nos. 1, 2, 4, 5, 6, 7, and 8

The Complainants argue that the installation of a smart meter by PPL would be a violation of their Constitutional rights. Exc. at 8-10, 14-16, 23-25, 28, 33-39.

b. Replies

PPL provides that Pennsylvania appellate courts have held that EDCs, like PPL, are not state actors in relation to the installation of smart meters. R. Exc. at 16 (citing *Povacz I*). PPL contends that even if the Company were a state actor, the Seventh

Court of Appeals found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search. *Id.* (citing *Naperville II*).

c. Disposition

To the extent the Complainants' Exceptions assert that the ALJ erred by not finding that the installation of a smart meter constitutes a violation of the Complainant's constitutional rights, we shall deny the Exceptions. *See*, Exc. at 8-10, 14-16, 23-25, 28, 33-39.

As a general matter, we agree with PPL's argument that the Company is not a state actor, and therefore, the Complainant fails to assert a constitutional claim. *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (additional citations omitted). Further, in *Povacz II*, the Pennsylvania Supreme Court noted the Commonwealth Court's conclusion that the assertion of a constitutional right to refuse installation of a smart meter was unfounded. *See, Povacz II* at 985, fn. 8. As previously noted, *supra*, the Commonwealth Court's decision is binding on the question. Accordingly, to the extent the Complainants assert a constitutional right to refuse smart meter installation, we shall deny the Complainants' Exceptions on this issue without further discussion.

6. Complainants' Argument Regarding Data Privacy

a. Exception No. 8

The Complainants argue that the ALJ erred by not adequately addressing their privacy concerns. Exc. at 34-36, 39.

b. Replies

PPL contends that the Complainants' privacy concerns lack merit. PPL notes that its witness, Mr. Asbury, testified that "[c]ybersecurity was one of the cornerstones" of its Smart Meter Plan filing and that the Company protects the data from the smart meters using technologies such as firewalls, encryption, digital signatures, authentication and access controls. R. Exc. at 12 (citing PPL St. No. 4, at 7-8). PPL avers that its cybersecurity policies and practices are consistent with the national standard for the industry. R. Exc. at 12 (citing PPL St. No. 4 at 8).

PPL provides that the meter cannot determine if a customer is using a particular appliance. R. Exc. at 12 (citing PPL St. No. 3 at 7). PPL explains that the Company will collect data on the total amount of electricity used at the premises as well as significant event information, such as outages and voltages. R. Exc. at 13 (citing PPL St. No. 3; PPL Exh. KD-4, Section. 1.2).

c. Disposition

We shall deny the Complainants' Exception on this issue. PPL's witness, Mr. Durkin testified that the data collected by the smart meter does not contain personally identifiable information, such as the customer's name, account number, phone number or address. In addition, the data does not differentiate between the use of a specific appliance or appliances. PPL St. 3 at 7. Mr. Durkin also testified that the Company does not share AMI Data, except as required or permitted by law, regulatory agencies, or governmental authorities. *Id.* at 8.

PPL's witness, Mr. Asbury, testified that PPL takes several steps to protect against unauthorized public disclosure or access to AMI data including the use of technologies such as firewalls, encryption, digital signatures, authentication and access

controls. Mr. Asbury explained that data collected is protected through proprietary-based applications and five levels of password protection. In addition, prior to transmission, the data is highly encrypted. Once the data reaches the Company, it is further protected through the use of firewalls and user function roles that limit the availability of data to only what a user's job requires. PPL St. 4 at 7-8.

The ALJ agreed with PPL's contention that it is not a "state actor" but rather it is a private, regulated utility company not constrained by the Fourth Amendment. R.D. at 13 (citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974)). The ALJ also stated that there is no evidence that PPL is making its data easily accessible to law enforcement or other third parties. R.D. at 13.

We find no error in the ALJ's conclusions regarding data privacy. We are not persuaded by the Complainants' Exceptions that they have demonstrated a privacy risk of the proposed AMI meter to be installed by PPL. Thus, the Complainants' Exception No. 8 is denied.

IV. Conclusion

In light of the above discussion, we shall: (1) deny the Complainants' Exceptions; (2) adopt the ALJ's Initial Decision; and (3) dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by John and Janet Holder and June Maculesky on November 3, 2020, to the Initial Decision of Administrative Law Judge Elizabeth H. Barnes issued on October 14, 2020, at Docket No. F-2019-3008809 and F-2019-3008832, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on October 14, 2020, at Docket No. F-2019-3008809 and F-2019-3008832, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by John and Janet Holder and June Maculesky, on March 18, 2019 and amended on September 4, 2019, at Docket No. F-2019-3008809 and F-2019-3008832, is dismissed.

4. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being the most prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024